

*In the Matter of Robert Romano,  
Police Lieutenant (PM2590E),  
City of Vineland  
DOP Docket No. 2004-1915  
(Merit System Board, decided September 22, 2004)*

Robert Romano, represented by Robert G. Malestein, Esq., appeals the determination of the Division of Selection Services which denied his request for a make-up examination for Police Lieutenant (PM2590E), City of Vineland.

The subject examination was administered on October 23, 2003 and consisted of 75 multiple choice questions.

On appeal, appellant indicates that he was involved in a work-related accident while arresting a suspect in January 2003. As a result, he undergone surgery on his dominant right arm on September 26, 2003. He contends that when he received notice, on or about October 8, 2003, to appear for the subject exam, he was out of work and under the care of an orthopedic surgeon, Dr. Thomas Dwyer. Appellant maintains that he immediately took the notice to Dr. Dwyer, who, by letter dated October 13, 2003, informed the Department of Personnel that appellant would be unable to sit for the exam due to medical reasons. He argues that he meets the criteria set forth in *N.J.A.C. 4A:4-2.9(b)* since he had just undergone surgery and was taking narcotic pain medication. He maintains that the pain medication prescribed by Dr. Dwyer placed him at a distinct disadvantage since it affected his ability to concentrate. He indicates that he returned to work during the second week of November 2003 with light duty restrictions and he is receiving physical therapy.

## **CONCLUSION**

The Orientation Guide indicated that make-up examinations for police promotional examinations may be authorized, in pertinent part, for debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination. *See N.J.A.C. 4A:4-2.9(b).*

As a result of the New Jersey Supreme Court decision in *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 N.J. 49 (2003), a make-up examination pilot program was established, effective August 18, 2003 and running through August 17, 2004, to address test security concerns for public safety titles. The pilot program provides that make-up examinations for entry-level and promotional public safety exams may be authorized only in cases of: (a) error by the Department of Personnel or appointing authority; (b) death in the candidate's immediate family as evidenced by a copy of the death certificate; (c) catastrophic illness wherein the candidate has either suffered a life-threatening injury or illness, or requires an extended convalescent period, as evidenced by a doctor's diagnosis and statement, as well as documentation from the candidate's employer noting the candidate's related leave from work; (d) military leave, pursuant to *N.J.A.C. 4A:4-2.9(c)*; or (e) exoneration from pending disciplinary

or criminal charges, pursuant to *N.J.A.C. 4A:4-2.9(d)*. In addition, candidates are given a make-up exam when the next regularly scheduled exam for their particular title is administered.

In a letter dated August 18, 2004, Dr. Dwyer explains that on the test administration date, Mr. Romano "was recovering from elbow surgery due to a work-related injury. Mr. Romano was also taking Percocet (a narcotic pain medication) and Oxycontin. Please be advised, that the elbow developed an infection which delayed his return-to-work and also a longer need for pain medication. Mr. Romano was not discharged from our care until January 15, 2004."

The Division of Selection Services was prepared to offer reasonable accommodations to permit the candidate to take the test on the original exam date. These accommodations included a marker if the candidate was unable to write. However, his prescribed pain medications precluded his participation in the exam on the test date. Under the circumstances presented, no accommodation could have been made which would have permitted his participation on the exam date.

## **ORDER**

Therefore, it is ordered that this appeal be granted and appellant be scheduled for a make-up examination.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.